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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,880	07/18/2003	Gavin Peacock	60072-0926	2746

29989 7590 01/16/2007  
HICKMAN PALERMO TRUONG & BECKER, LLP  
2055 GATEWAY PLACE  
SUITE 550  
SAN JOSE, CA 95110

EXAMINER

PANTOLIANO JR, RICHARD

ART UNIT	PAPER NUMBER
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2194

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/16/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

# Office Action Summary

Application No.

10/622,880

Applicant(s)

PEACOCK ET AL.

Examiner

Richard Pantoliano Jr

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 24-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 24-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
- Paper No(s)/Mail Date 20031014, 20040220.

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

WILLIAM THOMSON  
SUPERVISORY PATENT EXAMINER

### DETAILED ACTION

1. This is the initial office action for Application# **10/622,880** filed on **18 July 2003** with preliminary amendment received on 29 March 2005. **Claims 24-31** are currently pending and have been considered below.

#### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. **Claims 24-31** is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. **Claim 24** recites the limitation of the unified exchange manager accepting a message and then further recites the unified exchange manager beginning to execute. In order for the unified exchange manager to perform any function, it must already be executing.
5. **Claims 25-31** fail to correct the deficiencies of **Claim 24** and are therefore rejected for the same reasons as **Claim 24** above.

#### ***Claim Rejections - 35 USC § 101***

6. 35 U.S.C. 101 reads as follows:  
  
Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. **Claims 24-31** are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

8. Software constitutes "functional descriptive material". Functional descriptive material consists of data structures and computer programs which impart functionality when employed as a computer component. Functional descriptive material is nonstatutory when claimed as descriptive material *per se*. *Warmerdam*, 33 F.3d at 1360, 31 USPQ2d at 1759. When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized.

9. The recitation of "a software product carrying code..." does not limit the code to a computer readable medium that would give the claimed invention a tangible embodiment. The claims encompass functional descriptive material *per se* and are, therefore, nonstatutory.

### ***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. **Claims 24-28** are rejected under 35 U.S.C. 102(b) as being anticipated by Lazaridis et al. (US Pat: 5,802,312).

11. As per **Claim 24**, Lazaridis et al. discloses the invention substantially as claimed including a soft-ware product carrying code for providing data communications in a

computer system, wherein execution of the code by one or more processors causes the one or more processors to perform the steps of:

a) accepting message information within a unified exchange manager (Col. 14, line 37 – Col. 15, line 9) (The Process Open Connection (1001) module of the File Transfer Agent (206) meets this limitation);

b) executing the unified exchange manager to select an appropriate application from a plurality of applications that are executable on the computer system, the unified exchange manager selecting the appropriate application based on a data type of the message information, wherein said unified exchange manager communicates with a plurality of communication libraries, each said communication library implementing a particular protocol for external communication, wherein at least one of said communication libraries comprises a wireless communication library (Col. 4, line 58 – Col. 5 – line 60 and Figure 2);

c) determining whether a user accepts said message information (Col. 6, lines 4-65); and

d) passing said message information from said unified exchange manager to the appropriate application program in response to said user accepting said message information (Col. 14, line 22 – Col 16, line 4).

12. As per **Claim 25**, Lazaridis et al. further discloses alerting said appropriate application that said appropriate application will be receiving said message information (Col. 4, line 58 – Col. 5, line 60 and Figure 2).

13. As per **Claim 26**, Lazaridis et al. further discloses said message information is from an external source (Col. 4, line 58 – Col. 5, line 60 and Figure 2).

14. As per **Claim 27**, Lazaridis et al. further discloses said message information is from a second application program (Col. 4, line 58 – Col. 5, line 60 and Figure 2).

15. As per **Claim 28**, Lazaridis et al. further discloses returning from said appropriate application program a call handle that activates said application program and displays said message information (Col. 4, line 58 – Col. 5, line 60 and Figure 2) (Since the application making use of the File Transfer Agent is disclosed as being a separate entity from the application wishing to transfer messages, the File Transfer Agent would inherently require some sort of callback mechanism to inform the calling application of the completion of sending or receiving a message sent to or from that application).

### ***Claim Rejections - 35 USC § 103***

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. **Claims 29-31** are rejected under 35 U.S.C. 103(a) as being unpatentable over Lazaridis et al. in view of Gutman (US Pat: 5,737,690).

18. As per **Claims 29 and 30**, Lazaridis et al. discloses the software product as claimed in **Claim 24**, but does not disclose wherein the wireless communication library comprises an infrared communication library implementing the IrDA protocol.

19. Gutman discloses the use of IrDA in a wireless communication system for the purpose of transferring messages (Col. 3, lines 1-24; Col. 4, lines 19-43).

20. It would have been obvious to one of ordinary skill at the time of invention to modify the system disclosed by Lazaridis et al. with the teachings of Gutman. One would have been motivated by the fact that Lazaridis et al. discloses that said invention is designed to ensure the delivery of messages over wireless networks (Col. 2, lines 18-20) and Gutman discloses that well-known wireless networks consisting of IrDA can be used to substitute for radio frequency networks (Col. 3, lines 1-24; Col. 4, lines 19-43), upon which Lazaridis et al. primarily focuses.

21. As per **Claims 31**, Lazaridis et al. discloses the software product as claimed in **Claim 24**, but does not disclose wherein said communication libraries comprises a pager communication library.

22. Gutman discloses the use of pager communications over in a wireless communication system for the purpose of transferring messages (Col. 2, lines 32-42; Col. 3, lines 1-24; Col. 4, lines 19-43).

23. It would have been obvious to one of ordinary skill at the time of invention to modify the system disclosed by Lazaridis et al. with the teachings of Gutman. One

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would have been motivated by the fact that Lazaridis et al. discloses that said invention is designed to ensure the delivery of messages over wireless networks (Col. 2, lines 18-20) and Gutman is attempting to ensure the delivery of pages over wireless networks (Col. 2, lines 32-42; Col. 3, lines 1-24; Col. 4, lines 19-43).

### ***Conclusion***

24. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Hawkins et al. (US Pat: 6,000,000) and Chase, Jr. (US Pat: 5,974,238).

25. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard Pantoliano Jr whose telephone number is (571) 270-1049. The examiner can normally be reached on Monday-Thursday, 8am - 4 pm EST.

26. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Thomson can be reached on (571)272-3718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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27. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

RP

12/30/06

  
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